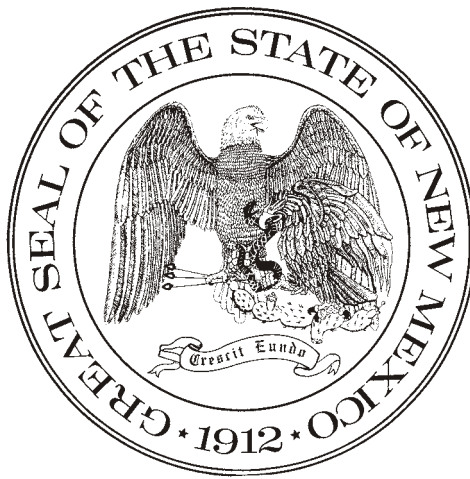


# **Tobacco Settlement Revenue Oversight Committee**

## **2007 INTERIM REPORT**



**New Mexico State Legislature**  
*Legislative Council Service*  
*411 State Capitol*  
*Santa Fe, New Mexico*

**December 2007**  
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# **CONTENTS**

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## **Highlights of Recommendations and Proposed Legislation**

- **Summary of 2007 Interim**
- **Section 2-19-1 NMSA 1978**
- **Fiscal Year 2009 Recommendation Spreadsheet**
- **Fiscal Year 2009 Recommendation Narrative**
- **Legislation Endorsed by the Committee**

## **2007 Interim Work Plan**

## **Committee Agendas**

## **Committee Minutes**

**HIGHLIGHTS OF RECOMMENDATIONS**

**AND**

**PROPOSED LEGISLATION**

## SUMMARY

The Tobacco Settlement Revenue Oversight Committee was created in statute as a joint interim legislative committee. The committee monitors the use of revenues received as a result of the Master Settlement Agreement (MSA) signed by the attorneys general of 46 states with the four largest tobacco companies in the United States — Brown & Williamson, Lorillard, Philip Morris and R.J. Reynolds. The agreement was signed on November 23, 1998. The committee meets during the interims "to receive and review evaluations of programs" that receive appropriations of the tobacco revenues. Each year, the committee takes testimony regarding the performance results of programs funded and prepares recommendations for future funding. Those funding recommendations are provided to the Legislative Finance Committee on or before December 15 of each year.

The committee makes recommendations as necessary for changes in legislation regarding use of the tobacco settlement revenue. It is critical that the State of New Mexico aggressively pursue its enforcement efforts as required under the MSA. The interim committee works closely with representatives of the New Mexico Attorney General's Office to ensure state compliance.

The Tobacco Settlement Permanent Fund consists "of money distributed to the state pursuant to the Master Settlement Agreement entered into between tobacco product manufacturers and various states, including New Mexico". The Tobacco Settlement Program Fund consists "of distributions made to the fund from the tobacco settlement permanent fund". Each year, 50% of the revenues are retained in the Tobacco Settlement Permanent Fund and the remaining 50% is placed in the program fund, from which it is appropriated primarily to the Department of Health, the Human Services Department and the University of New Mexico Health Sciences Center. The funds are used for health care; tobacco use cessation and prevention programs; breast and cervical cancer screening and treatment programs; diabetes prevention and control programs; HIV/AIDS services; research into the prevention and treatment of tobacco-related diseases, most particularly, lung diseases; research in genomics, biocomputing and environmental health; and Medicaid. Several programs funded each year by appropriations to the Health Sciences Center serve pediatric oncology and trauma patients; the telehealth program; rural health centers; the poison and information center; and the Los Pasos program.

Between fiscal years 1999 and 2007, the state received more than \$320 million in actual payments as a result of the MSA. In August 2007, the market value of the Tobacco Settlement Permanent Fund was \$95 million, following a \$21.19 million payout to the Tobacco Settlement Program Fund. Approximately \$42 million in tobacco revenue is projected for fiscal year 2009, providing half of that amount for appropriation by the legislature.

The committee made several funding recommendations. For a description of them, please refer to the Tobacco Settlement Revenue Oversight Committee fiscal year 2009 recommendations. One major recommendation is an increase in the funding for the Tobacco Use Prevention and Control Program, or TUPAC. The current funding is \$9.115 million; \$9.95 million is recommended for fiscal year 2009. A major goal of the committee is to increase funding for comprehensive tobacco use cessation and prevention programs, which will

eventually reduce the number of tobacco users, thereby reducing tobacco-related diseases and associated health care costs. The Centers for Disease Control and Prevention (CDC) recommends spending a minimum of \$13.7 million on such a program in New Mexico in order to reduce tobacco use significantly. TUPAC has contracts with over 72 entities across the state to implement the goals of the program. The increase in funds would allow, among other things, a 1-800-HELP line for cessation services, an increase in targeted school districts and youth activities and tobacco cessation coverage in health plans.

At the suggestion of the Attorney General's Office, the committee endorsed a legislative proposal to clarify the authority of agents of the Taxation and Revenue Department to seize cigarettes that are classified as "contraband" pursuant to the MSA.

It is possible that ongoing discussions among representatives of the Attorney General's Office and The Taxation and Revenue Department will impact the final version of the proposal, which is currently scheduled for introduction in the 2008 legislative session.

The primary reason for the proposal is to comply with the provisions of the MSA and to assist with enforcement of unstamped tobacco products. The changes will expedite the seizure of unstamped products; however, it will not apply to nontribal cigarettes.

Tobacco revenues are tied to enforcement efforts; thus, the committee unanimously recommended that regular operating budgets sufficiently address the costs of enforcement initiatives required under the tobacco laws of New Mexico and related agreements.

## ARTICLE 19

### Tobacco Settlement Revenue Oversight Committee

Section

2-19-1 Tobacco settlement revenue oversight committee created; membership; duties.

#### **2-19-1. Tobacco settlement revenue oversight committee created; membership; duties.**

A. There is created a joint interim legislative committee that shall be known as the "tobacco settlement revenue oversight committee".

B. The tobacco settlement revenue oversight committee shall be composed of six members. Three members of the house of representatives shall be appointed by the speaker of the house of representatives and three members of the senate shall be appointed by the committees' committee of the senate or, if the senate appointments are made in the interim, those members shall be appointed by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee. Members shall be appointed from each house so as to give the two major political parties in each house the same proportionate representation on the tobacco settlement revenue oversight committee as prevails in each house.

C. The tobacco settlement revenue oversight committee shall:

(1) monitor the use of tobacco settlement revenue and meet on a regular basis to receive and review evaluations of programs receiving funding from tobacco settlement revenues;

(2) prepare recommendations, based on its program evaluation process, of program funding levels for the next fiscal year. The recommendations shall be made available to the New Mexico legislative council and the legislative finance committee on or before December 15 preceding each session; and

(3) make recommendations as necessary for changes in legislation regarding use of the tobacco settlement revenue.

D. The staff for the tobacco settlement revenue oversight committee shall be provided by the legislative council service.

**History:** Laws 2000 (2nd S.S.), ch. 9, § 4.

**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)**  
**FY 2008 AND 2009 RECOMMENDATIONS**  
(thousands of dollars; recurring unless noted)

<b>AGENCY AND PROGRAM</b>	<b>2008 TSROC Recs</b>	<b>2008 TSROC Approps</b>	<b>2009 TSROC Recs</b>	<b>2009 Proposed Inc (DEC)</b>
<b>Department of Health</b>				
Tobacco cessation and prevention programs	11,000.0	9,115.0	9,950.0 (d)	835.0
Diabetes prevention and control program	1,000.0	1,000.0	1,000.0	
HIV/AIDS services	470.0	470.0	470.0	
Breast & cervical cancer <i>screening</i> program	200.0	200.0	200.0	
<b>Total Department of Health</b>	<b>\$12,670.0</b>	<b>\$10,785.0</b>	<b>\$11,620.0</b>	<b>\$835.0</b>
<b>Human Services Department</b>				
Breast & cervical cancer <i>treatment</i> program	1,500.0	1,500.0	1,500.0	
Medicaid expansion	1,380.0	3,515.0	1,380.0	(2,135.0)
<b>Total Human Services Department</b>	<b>\$2,880.0</b>	<b>\$5,015.0</b>	<b>\$2,880.0</b>	<b>(\$2,135.0)</b>
<b>University of New Mexico</b>				
Innovations in preventing and treating tobacco-related diseases				
Genomics core facilities	216.7	162.5	162.5	
Epidemiology	499.8	374.8	374.8	
Enhanced tobacco-related research	240.0	180.0	180.0	
Clinical research and trials	438.8	329.1	329.1	
Biocomputing	604.8	453.6	453.6	
Subtotal UNM tobacco-related diseases	\$2,000.0 (a)	\$1,500.0	\$1,500.0	\$0.0
<b>Other programs</b>				
Project ECHO			100.0	100.0
Area health education center	50.0	50.0	50.0	
Center for telehealth (formerly telemedicine)	300.0	150.0	150.0	
Los Pasos program	50.0	50.0	50.0	
Pediatric oncology	800.0	400.0	400.0	
Poison & information center	450.0	450.0	450.0	
Specialty education in pediatrics	400.0	400.0	400.0	
Specialty education in trauma	400.0	400.0	400.0	
Subtotal UNM other programs	\$2,450.0	\$1,900.0	\$2,000.0	\$100.0
Contract with Lovelace Respiratory Research Institute				
Lung and tobacco-related diseases	1,500.0	1,000.0	1,000.0	
Funding retained by UNM (Instruction & General)	0.0	1,000.0		(1,000.0)
Subtotal UNM/LRRI/I & G	1,500.0	2,000.0	1,000.0	(1,000.0)
<b>Total University of New Mexico</b>	<b>\$5,950.0</b>	<b>\$5,400.0</b>	<b>\$4,500.0</b>	<b>(\$900.0)</b>
<b>Indian Affairs Department</b>				
Tobacco cessation and prevention programs	500.0	500.0	700.0	200.0
<b>Total Indian Affairs Department</b>	<b>\$500.0</b>	<b>\$500.0</b>	<b>\$700.0</b>	<b>\$200.0</b>
<b>Veterans' Services Department</b>				
Early detection of lung cancer in veterans	1,300.0	(b)	1,300.0 (c)	
<b>Total Veterans' Services Department</b>	<b>\$1,300.0</b>		<b>\$1,300.0</b>	<b>\$1,300.0</b>
<b>GRAND TOTAL - Programs</b>	<b>\$23,300.0</b>	<b>\$21,700.0</b>	<b>\$21,000.0 (d)</b>	<b>(\$700.0)</b>

**Notes:**

- (a) indicates rounding.
- (b) \$350.0 general fund special approp. to VSD for early detection of lung cancer in veterans.
- (c) Recommendation for FY2009 only.
- (d) If NM receives additional revenues, or cash balances are realized, then TSROC recommends them for TUPAC programs.

**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**  
**FISCAL YEAR 2009 RECOMMENDATIONS**  
**(dollars in thousands)**

**1. INCREASE FUNDING FOR THE TOBACCO USE PREVENTION AND CONTROL PROGRAM (TUPAC), DEPARTMENT OF HEALTH (DOH)**

**Current Funding — \$9,115.0**

**FY 2009 Recommended Funding — \$9,950.0**

The committee recommends continuing to build a comprehensive tobacco cessation and prevention program that will eventually reduce the number of tobacco users, thereby reducing tobacco-related disease and treatment. The Centers for Disease Control and Prevention (CDC) recommends spending a minimum of \$13.7 million on such a program in order to reduce tobacco use significantly.

TUPAC contracts with over 72 contractors across the state to implement the goals of the program. The increase in funds would allow, among other things, a 1-800-HELP line for cessation services, an increase in targeted school districts and youth activities and tobacco cessation coverage in health plans. Contractors under this program fall into several categories:

- **Community Programs**

Local community programs reduce tobacco use through changes in the social environment and through community partnerships. The programs combine prevention, education and cessation efforts to mobilize communities to combat tobacco use and exposure. In addition to community health planning, the programs recruit youth into tobacco use prevention coalitions, train youth as advocates for their peers, provide media literacy and merchant education and counter tobacco marketing activities.

- **Cessation Programs**

These programs focus on increasing the access and availability of counseling and treatment to stop smoking, which range from the simplest quitting techniques to the most intensive. They are based upon proven intervention models. The programs include cessation interventions in schools, communities and health facilities; education on how to deliver cessation services; training for people who will lead cessation groups; and media messages on quitting.

- **School-Based Youth and Parent Programs**

These funds are awarded to school districts or allied organizations that provide programs ranging from age-specific classroom curricula to teacher training, special school projects, media literacy training, peer education programs and cessation programs for staff, parents and students. The programs are intended to prevent youth initiation of tobacco use, educate youth about the dangers of tobacco use, teach life skills and refusal skills and provide an opportunity for youth who already smoke or use spit tobacco to quit.



- **Media Campaigns**

These funds are awarded to provide public awareness and education campaigns that send and reinforce powerful tobacco-free messages to promote cessation and prevention of tobacco use and educate about risks associated with secondhand smoke. Activities include newspaper articles featuring youth tobacco prevention; anti-tobacco banners and billboards; media literacy training; counter advertising for TV, radio, billboard and print media; and a 1-800-4-CANCER help line.

- **Partnerships with Disparate Populations**

These funds are awarded to assist various communities that are disproportionately affected by tobacco use, including Native Americans, Hispanics, women, rural populations and low-income individuals. Partnerships with these groups are aimed at increasing prevention and reducing tobacco use. Activities include facilitating focus groups and organizing and implementing forums to educate and inform.

- **Surveillance and Evaluation**

These funds are used to monitor the behaviors, attitudes and outcomes related to tobacco use and to track the progress of program elements and performance indicators. Efforts include developing a common reporting format for all TUPAC programs, providing evaluation training, conducting youth and adult tobacco surveys and identifying, collecting and analyzing evaluation information and data.

- **SMART Moves and the New Mexico Alliance of Boys' and Girls' Clubs**

SMART Moves is a national prevention program that aims to provide young people with the knowledge, skills, sense of self-worth and peer support they need to avoid alcohol, tobacco and other drugs. The program promotes involvement in other drug-related avoidance programs. Based on best practices from prevention specialists, the SMART Moves curriculum has been implemented successfully in the New Mexico Alliance of Boys' and Girls' clubs and has shown significant positive results during the past three years.

## **2. CONTINUE FUNDING THE DIABETES PREVENTION AND CONTROL PROGRAM, DOH**

**Current Funding — \$1,000.0**

**FY 2009 Recommended Funding — \$1,000.0**

These funds provide public education and media exposure on diabetes and support for rural clinics, including supplies, equipment and lab tests. They also provide diabetes education on children's health as well as activity and nutrition programs in elementary schools.

## **3. CONTINUE FUNDING HIV/AIDS SERVICES, DOH**

**Current Funding — \$470.0**

**FY 2009 Recommended Funding — \$470.0**

These funds provide chronic-care AIDS treatment services that help people with AIDS to lead longer, fuller and more productive lives. The care includes practical, psychosocial and clinical services. The funds are also used to contract with community-based organizations to implement statewide HIV prevention and education programs.

#### **4. BREAST AND CERVICAL CANCER SCREENING PROGRAM, DOH**

**Current Funding — \$200.0**

**FY 2009 Recommended Funding — \$200.0**

The purpose of these funds is to provide breast and cervical cancer *screening* for women. The DOH has an extensive outreach program that includes advertising the program through billboards, flyers, bus signs, radio, newspapers and large community activities. There is a toll-free number to call.

#### **5. CONTINUE FUNDING THE BREAST AND CERVICAL CANCER TREATMENT PROGRAM, HUMAN SERVICES DEPARTMENT (HSD)**

**Current Funding — \$1,500.0**

**FY 2009 Recommended Funding — \$1,500.0**

The purpose of these funds is to provide *treatment* for women with breast or cervical cancer who are eligible for Medicaid. New Mexico receives an enhanced federal match (nearly 4:1) for this program. Since the program began in July 2002, the number of participants has more than doubled. The program has been successful in early detection of cancer and precancerous conditions; and for women in the program, there is full Medicaid coverage through "fee for service" (FFS).

#### **6. MEDICAID ELIGIBILITY, HSD**

**Current Funding — \$3,515.0**

**FY 2009 Recommended Funding — \$1,380.0**

The purpose of these funds is to provide Medicaid to eligible persons in New Mexico. The FY 2009 funding recommendation is identical to the recommendation made by the committee for FY 2008. Due to reduced funding from the master settlement agreement and to an increase in the funding for tobacco cessation and prevention programs, this recommendation is less than the funding level for FY 2009.

#### **7. CONTINUE FUNDING FOR INNOVATIONS IN PREVENTION AND TREATMENT OF TOBACCO-RELATED DISEASES, UNIVERSITY OF NEW MEXICO HEALTH SCIENCES CENTER (UNMHSC)**

**Current Funding — \$1,500.0**

**FY 2009 Recommended Funding — \$1,500.0**

These funds would be used for existing health care research programs by the UNMHSC to translate research findings into effective clinical care programs, to disseminate scholarly work and to recruit and hire scientists and support personnel. The research funds would be spent as follows:

Genomics core facilities	\$ 162.5
Epidemiology	374.8
Enhanced tobacco-related research	180.0
Clinical research and trials	329.1
Biocomputing	<u>453.6</u>
	\$1,500.0

**8. INCREASE FUNDING FOR OTHER PROGRAMS ADMINISTERED BY UNM**

**Total Current Funding — \$1,900.0**

**Total FY 2009 Recommended Funding — \$2,000.0**

- **Project Extension for Community Healthcare Outcomes (Project ECHO) — \$100.0**

This is a telemedicine and distance-learning program linking health care providers from rural clinics, the Indian Health Service and prisons with specialists at UNM. Project ECHO has expanded access to treatment for people living in rural areas throughout New Mexico and needing treatment for chronic, common and complex diseases. This is the first year of this funding recommendation.

- **Area Health Education Centers — \$50.0**

The purpose of these funds is to increase the number of health care professionals practicing in rural and underserved areas and to expand clinical training in those areas for medical, nursing, public health, pharmacy, physician assistants and allied health students, as well as for primary care physicians. Additionally, the funds are intended to increase the health profession applicant pool from underrepresented ethnic minorities and from shortage areas. Finally, the funds would support and provide continuing education programs in order to retain health professionals in the underserved areas.

- **Center for Telehealth — \$150.0**

The purpose of these funds is to improve the quality of and access to health care systems in rural New Mexico by using advanced technology to extend the resources of the UNMHSC to remote areas of the state. The funds are used to increase the number of clinical services, educational programs and administrative activities delivered to remote sites. Funds are used for physician salaries, supplies and travel. The center collaborates with the federal government and the University of Hawaii.

-

- **Los Pasos Program — \$50.0**

The purpose of these funds is to support salaries of doctors who provide comprehensive health services to families and to children up to age three who have been exposed in utero to alcohol and other drugs. The goals include the prevention of negative consequences of parental use of alcohol, tobacco and other drugs, as well as training support and technical assistance to agencies and community programs in northern and central New Mexico.

- **Pediatric Oncology — \$400.0**

The purpose of these funds is to support salaries of doctors who provide statewide quality care, treatment, monitoring and support for children and families facing childhood cancer. The program has initiated a three-year pediatric oncology curriculum for residents, and it advances the treatment of childhood cancer through the pursuit of clinical and basic research at local and national levels.

- **Poison and Information Center — \$450.0**

The purpose of these funds is to reduce the morbidity and mortality associated with poisoning and to encourage proper use of medications. The center provides a statewide poison prevention program, educates the public, offers first-aid information, distributes materials and provides treatment information to health professionals. The funds support 24-hour statewide expert assistance for poisoning emergencies. The center has an active research program, provides education and training to health care professionals and collaborates with local, state and federal agencies.

- **Specialty Education in Pediatrics — \$400.0**

The purpose of these funds is to pay the salaries of physicians serving on the pediatrics faculty at the UNM School of Medicine. Faculty members treat children as well as educate medical students, residents and community providers. They conduct research to advance pediatric health care across the state. The funds will also be used for related materials, services and travel to assist the educational program.

- **Specialty Education in Trauma — \$400.0**

The purpose of these funds is to pay the salaries of physicians serving on the UNM School of Medicine faculty. Faculty members educate medical students in trauma, critical care and emergency care and staff the Level I Trauma Center at the UNM Hospital emergency room.

## **9. CONTINUE FUNDING EMPHYSEMA AND LUNG CANCER RESEARCH**

### **Current Funding — \$1,000.0**

### **FY 2009 Recommended Funding — \$1,000.0**

These funds would continue UNM's contract with Lovelace Respiratory Research Institute (LRRI) for its research in emphysema and lung cancer detection and treatment. LRRI is "leading the world" in lung cancer research. The research also includes a cohort study on women at risk for lung cancer and emphysema.

## **10. INCREASE FUNDING TOBACCO CESSATION AND PREVENTION PROGRAMS, INDIAN AFFAIRS DEPARTMENT (IAD)**

**Current Funding — \$500.0**

**FY 2009 Recommended Funding — \$700.0**

The committee is recommending increased funding for tobacco cessation and prevention programs that affect Native American communities throughout the state, with a program evaluation to mirror that which was developed and implemented by the DOH. Mini-grants were awarded to 22 tribes. Five contracts were awarded for development of tobacco cessation programs. Some funding has been used for a Tobacco Cessation and Prevention Youth Planning Seminar. Future funding will be used to support tribal prevention efforts, tribal capacity building and the development of a culturally appropriate tobacco cessation curriculum.

## **11. EARLY DETECTION OF LUNG CANCER, VETERANS' SERVICES DEPARTMENT (VSD)**

**(Current Funding is through the General Fund, not the Tobacco Settlement Program Fund — \$350.0 )**

**FY 2009 Recommended Nonrecurring Funding — \$1,300.0**

These funds were used to a contract with BioModa, Inc., in FY 2003 to fund a clinical study validating diagnostic technology for the early detection of lung cancer using an inexpensive, noninvasive test developed in New Mexico. Funding would support a longitudinal study to be administered by the VSD and available to veterans living in New Mexico.

## **12. ADDITIONAL CASH BALANCES OR REVENUES EXCEEDING ESTIMATES**

The committee recommends that any additional revenues or cash balances available in the Tobacco Settlement Program Fund in FY 2009 be used for increasing awards to TUPAC up to the \$13.7 million level recommended by the CDC.

## **13. ENFORCEMENT FUNDING FOR THE ATTORNEY GENERAL'S OFFICE (AGO)**

The committee unanimously supports the award of sufficient funding for the operating budget of the AGO to enforce adequately the provisions of the master settlement agreement and New Mexico's tobacco laws.

**LEGISLATION**

**ENDORSED BY THE COMMITTEE**

HOUSE BILL

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

DISCUSSION DRAFT

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TAXATION; CLARIFYING DEFINITIONS RELATING TO  
CIGARETTE TAXATION AND THE MASTER SETTLEMENT AGREEMENT;  
REQUIRING THAT STAMPED PACKAGES OF CIGARETTES BE MANUFACTURED  
BY ENTITIES LISTED ON THE ATTORNEY GENERAL'S DIRECTORY OF  
TOBACCO PRODUCT MANUFACTURERS AND BRAND FAMILIES; AMENDING  
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-12-2 NMSA 1978 (being Laws 1971,  
Chapter 77, Section 2, as amended) is amended to read:

"7-12-2. DEFINITIONS.--As used in the Cigarette Tax Act:

A. "brand family" means all styles of cigarettes  
that are sold under the same trademark and that are  
differentiated from one another by the use of terms such as  
"menthol", "lights", "kings" and "100s" and by the use of a

.170417.2

underscored material = new  
[bracketed material] = delete

1 logo, symbol, motto, selling message, recognizable pattern of  
2 colors or other indicia similar to or identifiable with a known  
3 brand of cigarettes;

4 [A.] B. "cigarette" means:

5 (1) any roll of tobacco or any substitute for  
6 tobacco wrapped in paper or in any substance not containing  
7 tobacco; or

8 (2) any roll of tobacco that is wrapped in any  
9 substance containing tobacco, other than one hundred percent  
10 natural leaf tobacco, which because of its appearance, the type  
11 of tobacco used in the filler, its packaging and labeling, or  
12 its marketing and advertising, is likely to be offered to, or  
13 purchased by, consumers as a cigarette, as described in  
14 Paragraph (1) of this subsection, and "cigarette" includes  
15 bidis and kreteks;

16 [B.] C. "contraband cigarettes" means cigarette  
17 packages with counterfeit stamps, counterfeit cigarettes,  
18 cigarettes that have false or fraudulent manufacturing labels,  
19 cigarettes not sold in packages of five, ten, twenty or twenty-  
20 five; ~~and~~ cigarette packages without the tax or tax-exempt  
21 stamps required by the Cigarette Tax Act; and cigarettes, the  
22 tobacco product manufacturer or brand family of which is not  
23 included in the directory;

24 [C.] D. "department" means the taxation and revenue  
25 department, the secretary of taxation and revenue or any



1 employee of the department exercising authority lawfully  
2 delegated to that employee;

3 E. "directory" means a listing of tobacco product  
4 manufacturers and brand families that is developed, maintained  
5 and published by the attorney general;

6 ~~[D-]~~ F. "distributor" means a person licensed  
7 pursuant to the Cigarette Tax Act to sell or distribute  
8 cigarettes in New Mexico. "Distributor" does not include:

9 (1) a retailer;

10 (2) a cigarette manufacturer, export warehouse  
11 proprietor or importer with a valid permit pursuant to 26  
12 U.S.C. 5713, if that person sells cigarettes in New Mexico only  
13 to distributors that hold valid licenses under the laws of a  
14 state or sells to an export warehouse proprietor or to another  
15 manufacturer; or (3) a common or contract carrier  
16 transporting cigarettes pursuant to a bill of lading or freight  
17 bill, or a person who ships cigarettes through the state by a  
18 common or contract carrier pursuant to a bill of lading or  
19 freight bill;

20 ~~[E-]~~ G. "license" means a license granted pursuant  
21 to the Cigarette Tax Act that authorizes the holder to conduct  
22 business as a manufacturer or distributor of cigarettes;

23 ~~[F-]~~ H. "manufacturer" means a person that  
24 manufactures, fabricates, assembles, processes or labels a  
25 cigarette or that imports from outside the United States,

.170417.2

1 directly or indirectly, a finished cigarette for sale or  
2 distribution in the United States;

3 ~~[G.]~~ I. "master settlement agreement" means the  
4 settlement agreement and related documents entered into on  
5 November 23, 1998 by the state and leading United States  
6 tobacco product manufacturers;

7 ~~[H.]~~ J. "package" means an individual pack, box or  
8 other container; "package" does not include a container that  
9 itself contains other containers, such as a carton of  
10 cigarettes;

11 ~~[I.]~~ K. "retailer" means a person, whether located  
12 within or outside of New Mexico, that sells cigarettes at  
13 retail to a consumer in New Mexico and the sale is not for  
14 resale;

15 ~~[J.]~~ L. "stamp" means an adhesive label issued and  
16 authorized by the department to be affixed to cigarette  
17 packages for excise tax purposes and upon which is printed a  
18 serial number and the words "State of New Mexico" and "tobacco  
19 tax";

20 M. "tobacco product manufacturer":

21 (1) means an entity that:

22 (a) directly, and not exclusively  
23 through an affiliate, manufactures anywhere cigarettes that are  
24 intended by that entity to be sold in the United States,  
25 including cigarettes intended to be sold in the United States

.170417.2

1 through an importer, except where the importer is an original  
2 participating manufacturer pursuant to the master settlement  
3 agreement, provided that the importer: 1) is responsible for  
4 the payments under the master settlement agreement with respect  
5 to the cigarettes as a result of the provisions of Subsection  
6 II(mm) of the master settlement agreement; 2) pays the taxes  
7 specified in Subsection II(z) of the master settlement  
8 agreement; and 3) does not market or advertise the cigarettes  
9 in the United States;

10 (b) is the first purchaser anywhere for  
11 resale in the United States of cigarettes manufactured  
12 anywhere; or

13 (c) is an entity that becomes a  
14 successor of an entity described in Subparagraphs (a) and (b)  
15 of this paragraph; and

16 (2) is not an affiliate of a tobacco product  
17 manufacturer unless the affiliate itself falls within the  
18 meaning of Paragraph (1) of this subsection;

19 ~~[K-]~~ N. "tax stamp" means a stamp that has a  
20 specific cigarette tax value pursuant to the Cigarette Tax Act;  
21 and

22 ~~[L-]~~ O. "tax-exempt stamp" means a stamp that  
23 indicates a tax-exempt status pursuant to the Cigarette Tax  
24 Act."

25 Section 2. Section 7-12-5 NMSA 1978 (being Laws 1971,

Chapter 77, Section 5, as amended) is amended to read:

"7-12-5. AFFIXING STAMPS.--

A. Except as provided in Section 7-12-6 NMSA 1978, all cigarettes shall be placed in packages or containers to which a stamp shall be affixed. Only a distributor with a valid license issued pursuant to the Cigarette Tax Act may purchase or obtain unaffixed tax-exempt stamps or tax stamps. A distributor shall not sell or provide unaffixed stamps to another distributor, manufacturer, export warehouse proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713 or any other person.

B. Stamps shall be affixed by the distributor to each package of cigarettes to be sold or distributed in New Mexico within ten days of receipt of those packages.

C. A distributor shall apply stamps only to packages of cigarettes that it has received directly from a manufacturer or importer of cigarettes that possesses a valid and current permit pursuant to 26 U.S.C. 5713.

D. A distributor shall not:

(1) affix a tax stamp or a tax-exempt stamp on a package of cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory; or

(2) sell, offer or possess for sale cigarettes of a tobacco product manufacturer or brand family that is not included in the directory.

1           ~~[D.]~~ E. Packages shall contain cigarettes in  
2 lots of five, ten, twenty or twenty-five.

3           ~~[E.]~~ F. Unless the requirements of this section are  
4 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall  
5 be affixed to each package of cigarettes subject to the  
6 cigarette tax and a tax-exempt stamp shall  
7 be affixed to each package of cigarettes not subject to the  
8 cigarette tax pursuant to Section 7-12-4 NMSA 1978.

9           ~~[F.]~~ G. A tax-exempt stamp is not an excise tax  
10 stamp for purposes of determining units sold pursuant to  
11 Section 6-4-12 NMSA 1978.

12           ~~[G.]~~ H. Stamps shall be affixed inside the  
13 boundaries of New Mexico, unless the department has granted a  
14 license allowing a person to affix stamps outside New Mexico."

15           Section 3. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2008.

## **2007 INTERIM WORK PLAN**

**2007 APPROVED**  
**WORK PLAN AND MEETING SCHEDULE**  
**for the**  
**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

The tobacco settlement revenue oversight committee was created pursuant to Section 2-19-1 NMSA 1978. The committee members are:

**Members**

Rep. Gail Chasey, Co-Chair  
Sen. Mary Jane M. Garcia, Co-Chair  
Sen. John T.L. Grubestic

Rep. Danice Picraux  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Advisory Members**

Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Joseph J. Carraro  
Sen. Dede Feldman

Sen. Linda M. Lopez  
Sen. James G. Taylor  
Rep. Teresa A. Zanetti

**Work Plan**

Section 6-4-9 NMSA 1978, as amended, provides that in each fiscal year, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to 50 percent of the total amount of money distributed to the tobacco settlement permanent fund in each fiscal year until that amount is less than an amount equal to 4.7 percent of the average of the year-end market values of the fund for the immediately preceding five calendar years.

The tobacco settlement revenue oversight committee will continue its oversight duties for the programs that receive funding through the tobacco settlement program fund. The committee will receive testimony regarding the balances in and projected revenues for both the tobacco settlement program fund and the tobacco settlement permanent fund.

During the 2007 interim, the tobacco settlement revenue oversight committee will:

(1) monitor the status of the revenue and reserve for the tobacco settlement permanent fund and the use of tobacco settlement program funds through committee oversight and evaluation of those programs recommended by the committee and funded by the legislature;

(2) meet, hear testimony regarding tobacco settlement-related issues and prepare recommendations of program funding levels for fiscal year 2009, based on the committee's program evaluation process; and

(3) make recommendations as necessary for changes in legislation relating to and regarding use of the tobacco settlement revenue.

## **2007 MEETING SCHEDULE**

### Date

June 22  
August 27  
October 1

### Location

Santa Fe  
Albuquerque  
Santa Fe



## **COMMITTEE AGENDAS**

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 22, 2007  
Room 311, State Capitol  
Santa Fe, New Mexico**

**Friday, June 22**

- 1:00 p.m.      **Call to Order**  
                  —Senator Mary Jane M. Garcia and Representative Gail Chasey, Co-Chairs
- 1:05 p.m.      **Introduction of New Staff**
- 1:10 p.m.      **2007 Committee-Sponsored Legislation**  
                  —Legislative Council Service Staff and Committee Co-Chairs  
                  —Dee Johnson Indoor Clean Air Act  
                  —Final Funding for Programs in FY08  
                  —Historical Funding Information  
                  —Additional Information
- 1:45 p.m.      **2007 Interim Work Plan and Meeting Schedule Development**
- 2:45 p.m.      **Public Comment**
- 3:00 p.m.      **Adjournment**

Revised: August 16, 2007

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**August 27, 2007  
University of New Mexico Children's Hospital Conference Room  
Albuquerque, New Mexico  
(See Parking Information Below)**

**Monday, August 27**

- 8:15 a.m.      **Meet and Greet Opportunity**
- 8:30 a.m.      **Call to Order**  
—Senator Mary Jane M. Garcia and Representative Gail Chasey, Co-Chairs
- Welcoming Remarks from UNM President David J. Schmidly**
- Approval of June 2007 Minutes**
- 8:45 a.m.      **Lovelace Respiratory Research Institute (LRRI) Performance Report**  
—Dr. Robert Rubin, President and CEO, LRRI
- 9:15 a.m.      **Tobacco Master Settlement Agreement (MSA) Update**  
—David Thomson, Assistant Attorney General  
—Revenue, Litigation, Legislation and Enforcement Updates
- 9:45 a.m.      **Tobacco Settlement Permanent Fund Balances and Investments**  
—Michael Custer, Equity Portfolio Manager, State Investment Council
- 10:00 a.m.     **Tobacco Settlement Preliminary Revenue Estimates; Update on Permanent Fund**  
—Laird Graeser, Chief Economist, Department of Finance and Administration
- 10:15 a.m.     **State of the State on Tobacco Issues**  
—Nathan Bush, Government Relations Director, American Cancer Society  
—Legislative Initiatives in Other States  
—Ideas for New Initiatives and Expanded Preventative Initiatives  
—Impact De-Earmarking Has Had in Other States  
—Cynthia Serna, Director, New Mexicans Concerned About Tobacco  
—Point-of-Sale and Other Tobacco Advertising  
—FDA Legislation
- 11:15 a.m.     **Breast and Cervical Cancer Program**  
—Larry Heyeck, Deputy Director, Medical Assistance Division (MAD), Human

Services Department (HSD)  
—Virginia Alcon, Staff Manager, MAD, HSD

11:30 a.m.     **Question and Answer—Committee Discussion**  
**Public Comment**  
**Staff Reports to Committee**

11:50 a.m.     **Walk to the UNM Cancer Center Conference Room—Lunch Presentation**  
—Dr. Cheryl Willman, Director and CEO, UNM Cancer Center  
—Prevention and Treatment of Tobacco-Related Diseases  
—Video  
—Cancer Research and Treatment Center Phases 1 and 2

**Afternoon Presentations Will Be in the Children's Hospital Conference Room**

1:15 p.m.     **University of New Mexico Health Sciences Center Performance Report**  
—Paul Roth, M.D., Executive Vice President for Health Sciences, Dean, UNM  
School of Medicine  
—Richard S. Larson, M.D., Ph.D., Vice President for HSC Translational  
Research, Professor of Pathology

2:00 p.m.     **Committee Preliminary Discussion on FY09 Program Funding Levels and  
Legislation Regarding Use of the Tobacco Settlement Revenue**

3:00 p.m.     **Adjournment**  
**Tour Portions of the Children's Hospital**  
—Steve McKernan, CEO, UNM Hospitals, Vice President for HSC Hospital  
Operations  
—Robert Katz, M.D., Vice President for HSC Clinical Affairs, Senior Associate  
Dean for Clinical Affairs

**PARKING:**

Public parking is in the Lomas Parking Structure south of Lomas Blvd. Turn south onto Campus Drive and into the structure. Take the pedestrian bridge over Lomas and ask for directions at the information desk.

Revised: September 14, 2007

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 1, 2007  
Room 311, State Capitol  
Santa Fe, New Mexico**

**Monday, October 1**

- 10:00 a.m.     **Call to Order and Approval of August Minutes**  
—Senator Mary Jane M. Garcia and Representative Gail Chasey, Co-Chairs
- 10:00 a.m.     **Tobacco Use Prevention and Control (TUPAC) Program Update**  
—Benny Shendo, Jr., Secretary, Indian Affairs Department
- 10:15 a.m.     **Introduction of Dr. Alfredo Vigil, Secretary, Department of Health (DOH)**
- 10:30 a.m.     **Tobacco Use Prevention and Control (TUPAC) Program Evaluation and RFP  
Process Report**  
—David Vigil, Bureau Chief, Chronic Disease Prevention and Control, DOH  
—Larry Elmore, Program Manager, TUPAC Program, DOH
- 11:30 a.m.     **Diabetes Program Evaluation and RFP Process Report**  
—Judith Gabriele, Program Manager, DOH
- 11:45 a.m.     **HIV/AIDS Program Evaluation and RFP Process Report**  
—Daryl Smith, Infectious Disease Bureau Chief, DOH
- 12:00 noon     **Lunch**
- 1:30 p.m.     **BioModa Update on Its Research**  
—John Cousins, President
- 2:30 p.m.     **Public Comment**  
**TUPAC discussion by Committee Members**  
**Funding Recommendations and Proposed Legislation**  
**Adjourn**

## **COMMITTEE MINUTES**

**MINUTES  
of the  
FIRST MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 22, 2007  
Room 311, State Capitol  
Santa Fe**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order on June 22, 2007 at 1:10 p.m. in Room 311, State Capitol, by Representative Gail Chasey and Senator Mary Jane M. Garcia, co-chairs.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Mary Jane M. Garcia, Co-Chair  
Sen. John T.L. Grubescic  
Rep. Danice Picraux  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Absent**

**Advisory Members**

Rep. Ray Begaye  
Sen. Joseph J. Carraro  
Sen. Dede Feldman

Sen. Rod Adair  
Sen. Linda M. Lopez  
Sen. James G. Taylor  
Rep. Teresa A. Zanetti

**Staff**

Roxanne Knight  
Larry Matlock

**Friday, June 22**

Representative Chasey welcomed all attendees to the organizational meeting of the TSROC and asked the members of the committee and support staff to introduce themselves. Additionally, the members of the audience were given an opportunity to introduce themselves. Ms. Knight noted that any drafting needed for the committee would be done by Cleo Griffith, and she noted that Mr. Matlock was temporarily assisting the committee until the student intern arrives later in the summer.

## **2007 Committee-Sponsored Legislation**

Ms. Knight began her presentation with a brief review of the legislation supported by TSROC and adopted during the 2007 legislative session. What is now called the Dee Johnson Clean Indoor Air Act was adopted and became effective June 15, 2007. Essentially, this bill establishes minimum standards for the statewide regulation of tobacco smoking. Although smoking is permitted in certain defined areas, including private residences, in general the law prohibits smoking in the workplace and other indoor public places. Representative Chasey noted that she was in attendance at the press conference held in Albuquerque to announce the provisions of the new law.

The Cigarette Tax Act was amended to redefine "cigarette" and to broaden the taxing authority for certain substances that are likely to be offered to or purchased by consumers as a cigarette. The tax rate per stick increased from 4.55 cents to 9.1 cents per stick in packs of 10 and to 18.2 cents per stick in packs of five. The current tax rate per stick for cigarettes in packs of 20, and now 25, is 4.55 cents.

The committee was given the fiscal year 2008 final funding recommendations and appropriations approved from the Tobacco Settlement Program Fund (see attached PDF of recommendations). Although the legislature did not appropriate tobacco settlement program funds for early detection of lung cancer in veterans, a general fund special appropriation for \$350,000 was included in HB 2 for the Veterans' Services Department to contract for those services. Senator Ryan noted that he sponsored that funding request, and although it was not at the level recommended by TSROC, he was pleased that the department received funding. Ms. Knight noted that the shaded items on the handout indicated where an appropriation was adopted at a level different from the TSROC recommendation. She explained that differences were due primarily to changes in the revenue projections and the Legislative Finance Committee (LFC) needing to keep the expenditures within the revenue limitations. Representative Chasey noted that Medicaid expansion had been an area that was impacted when funding flexibility was possible.

## **Historical Funding Information**

A draft spreadsheet containing historical funding levels from tobacco settlement funds, including those redirected to the general fund during 2003-2007, was reviewed by staff. Ms. Knight advised the members that she will be adding more revenue information to this sheet, so that all the historical financial information on the subject will be in one place. She suggested that historical funding might be a place to start during the interim when reviewing long-term funding and how those dollars have affected various state smoking and smoking-cessation statistics, as well as health care costs, etc. She suggested that trend data be provided by the entities making presentations at the interim meetings. Other items she mentioned for consideration during the program evaluation include matching funds or other revenue sources that are coupled with the tobacco revenues for program funding, performance data and projections of program impacts, if funding remained the same or was increased or decreased.

Members commented that they would like to see how these investments have "paid off". Also, they suggested looking at what has happened in states like Florida and Massachusetts, where the earmarking of tobacco funds has been eliminated.



Representative Begaye expressed some concern about the Indian Affairs Department (IAD) continuing to receive \$500,000 for tobacco cessation and prevention programs, suggesting that perhaps the funds should be appropriated to the Department of Health (DOH) instead. Representative Vaughn expressed concern about the sale of cheaper cigarettes on the reservations and how that affects the Tobacco Use Prevention and Control (TUPAC) programs and smoking in general. One suggestion was to require the TUPAC funding at IAD to be used for targeting specific areas, similar to a model done in Arizona. Representative Begaye noted that the reservations have several issues related to smoking, liquor sales and cockfighting.

Senator Carraro and Representative Chasey discussed the recently released Food and Drug Administration (FDA) report about reducing the levels of nicotine in cigarettes. Representative Chasey suggested that the committee look at "point-of-sale advertising". Senator Carraro asked what needs to be done to combat the tobacco initiatives such as the point-of-sale and media advertising. The committee would like to see a list of previous tobacco legislation and how it fared, as well as a list of legislative initiatives adopted by other states that might be good ideas for New Mexico.

Joint Rule 10-1 was reviewed by staff as a reminder for interim bill drafting. The rule provides that:

2004. if an interim committee has endorsed a bill, resolution or memorial, the LCS shall draft and prepare the bill resolution or memorial for introduction in ONLY ONE HOUSE; and

2005. the same requirement apply to the drafting of bills, resolutions and memorials **requested by** the governor or the various departments, institutions and agencies of the state.

There was committee discussion about the impact of the new joint rule. Members noted that both legislative bodies will have greater responsibility and may prevent some committees from "holding legislation hostage" while waiting for a duplicate bill to pass the other house.

The committee heard a brief listing of the information being provided to them in their files for the day's meeting. It included:

- recent articles about smoking-cessation initiatives and tobacco advertising;
- a March 2007 update to the cigarette excise tax rates nationally, which reflects New Mexico as being twenty-eighth in the rankings from the highest state excise tax rate;
- a February 2007 update to the states' allocations of payments from the tobacco companies and covering fiscal years 2000-2005. The most recent sheet shows that the 2005 allocations were 30 percent to health, 29 percent to budget shortfalls and 3.5 percent to tobacco control and a host of other things. (Representative Chasey indicated that the percentage allocations reflected those preferred by the tobacco companies in the settlement agreements.);
- a June 5, 2007 report from the Mellman Group to the Campaign for Tobacco-Free Kids, in which the data reflect that New Mexico is ranked twenty-sixth. New Jersey has the highest rate with \$2.58 per pack in state excise taxes. New Mexico now has the median tax rate of 91 cents per pack of 20;

- a summary of tobacco-related data about New Mexico. (Representative Chasey suggested that TUPAC at the DOH can provide data about New Mexico, along with the American Lung Association, the American Cancer Society and the Campaign for Tobacco-Free Kids. She indicated that there are trend data to show where New Mexico would be without the tobacco money.); and
- there was some question about an article in the newspaper referencing an additional \$2.8 million in tobacco revenue for fiscal year 2007. New Mexico has now received \$38.9 million, including the additional funds, which exceeds the revenue projections by \$2.7 million.

### **2007 Interim Work Plan and Meeting Schedule Development**

The proposed dates for the upcoming TSROC meetings were reviewed by committee members. Ms. Knight noted that the committee would only have two more meetings per a Legislative Council (LC) directive, and it was suggested that legislation be discussed as needed at both meetings.

The members reviewed the proposed work plan. Representative Chasey asked for a motion to adopt. Senator Garcia made the motion, which was seconded by Representative Chasey. There being no opposition, the motion was adopted unanimously by the committee.

Representative Chasey discussed the possibility of having the August meeting in Albuquerque, and a University of New Mexico (UNM) representative suggested that the meeting could be held at the UNM Health Sciences Center and that sufficient parking would be made available. It was determined that the budget would be less if the meeting were in Albuquerque versus Santa Fe. Staff indicated that the change be submitted with the work plan for LC approval.

### **Committee Discussion**

Representative Begaye expressed some concern about the ability of IAD to handle the \$500,000 appropriation for tobacco cessation and prevention programs, and he discussed whether the appropriation might need to be shifted back to DOH. He was concerned that the appropriation might be burdensome for IAD to administer. Representative Chasey said the committee would bring IAD representatives before the committee during one of the hearings. Representative Begaye expressed that the request for proposals process took four to six months last fiscal year for IAD to complete. Representative Chasey noted that it was not the intent of the committee to have this problem with the funding.

Representative Vaughn noted that she is a member of the Indian Affairs Committee, in which issues had been raised about the selling of cheaper cigarettes on the reservations and the "Catch-22" of having cheaper cigarettes available while trying to implement tobacco cessation and prevention programs. Discussion followed about the tribes keeping part of the tax that is collected on cigarettes. Representative Begaye noted that there are concerns about the potential impact on the reservations if restrictive smoking provisions are adopted.

Arizona was mentioned as a model for addressing smoking issues on the reservations, but, generally, the committee members indicated that the issue most likely should be raised in the Indian Affairs Committee. Also, it was noted that there are tribal leaders who are anti-smoking advocates.

There was discussion among members and some audience members about future revenues. It was noted that revenue projections will be generated in July.

Comments were accepted from the audience. Carlos Romero from UNM talked about tobacco taxes and the possibility that the federal government might raise tobacco taxes to shore up Medicaid. UNM wants Congress to raise the taxes.

Senator Carraro expressed concern about limiting the amount of nicotine in tobacco products, and he asked that the committee join together in supporting him, as well as in seeking UNM support. Senator Carraro noted that the American Cancer Society advised him on his legislation relating to this. General comments referenced the hundreds of millions of dollars that the tobacco companies spend on advertising. Nathan Bush noted the DOH media program has less than \$2 million, while tobacco companies are spending \$55 million to \$70 million.

Having no further business, the committee adjourned at 2:06 p.m.

**Revised: November 8, 2007**

**MINUTES  
of the  
SECOND MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**August 27, 2007**

**University of New Mexico Children's Hospital Conference Room  
Albuquerque, New Mexico**

The second meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative Gail Chasey, co-chair, on August 27, 2007 at 9:00 a.m. at the UNM Children's Hospital Conference Room in Albuquerque, New Mexico.

**Present**

Rep. Gail Chasey, Co-Chair  
Rep. Danice Picraux  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Absent**

Sen. Mary Jane M. Garcia, Co-Chair  
Sen. John T.L. Grubescic

**Advisory Members**

Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Joseph J. Carraro  
Sen. Dede Feldman  
Sen. Linda M. Lopez  
Rep. Teresa A. Zanetti

Sen. James G. Taylor

**Staff**

Roxanne Knight, Legislative Council Service (LCS) Researcher  
Jacob Winowich, LCS Intern

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**Monday, August 27**

Representative Chasey welcomed committee members and guests. Carlos Romero, associate vice president in government and community relations at the University of New Mexico (UNM), welcomed the committee members to the UNM Children's Hospital and Cancer Center. Mr. Romero reported that the UNM Children's Hospital has only been open for a couple of months, and he hoped there

would be time to tour parts of this new state-of-the-art facility. Although the president of UNM, David J. Schmidly, was unable to attend the meet-and-greet session, he did take the opportunity to visit with the committee during its afternoon session.

### **Approval of the June 2007 Minutes**

The minutes of the June 22, 2007 meeting were adopted unanimously by the committee members on the motion of Senator Feldman, which was seconded by Representative Vaughn.

### **Lovelace Respiratory Research Institute (LRRI) Performance Report**

Dr. Robert Rubin, president and CEO of LRRI, gave the first presentation, explaining that he represents an independent, private research institute serving humanity through research on the prevention, treatment and cure of respiratory disease. The LRRI is interested in curing the effects of tobacco use. The organization's original expectation for use of state contract funding (from tobacco settlement revenue appropriated to UNM) was to leverage it for research dollars with an eye toward potential economic development. He noted that 450,000 New Mexicans are past and present tobacco product users.

He reviewed the major scientific accomplishments of the organization since 2001, including its most notable accomplishment, establishment of the Lovelace Smokers Cohort, which has now enrolled more than 1,900 smokers, mostly women whose medical histories and genetics are evaluated and studied. The participants receive medical support. The LRRI's Chronic Obstructive Pulmonary Disease (COPD) Program is essential to the lung cancer program of the UNM Cancer Research and Treatment Center and the LRRI's Lung Cancer Biology Program. The objective of the LRRI's study is to determine the genetic basis of emphysema and to develop new therapies. COPD is a disease composed of emphysema and chronic bronchitis, and it is a result of severe damage to lung tissue. It is believed that COPD results from an imbalance of proteins that degrade lung tissue and its inhibitors. The LRRI wants to develop drugs that reverse the genetic chemical imbalance caused by smoking.

Since the first funding of the LRRI's tobacco therapeutic program, the LRRI has used state dollars with the help of \$11 million in direct new funding to New Mexico to develop a complex infrastructure. The LRRI has used the related basic science infrastructure of animal exposure systems to obtain over \$25 million in new funding activity from biotechnology and pharmaceutical industries and the National Institutes of Health (NIH); the latter being the LRRI's largest partner. Data suggest that people who have COPD and are on statin therapy live longer and do better than those not taking statins. The LRRI would also like to identify genes critical for the development of COPD, define lung cancer risk and develop an early diagnostic test.

Senator Carraro requested a tour of the LRRI, and he noted there is concern with duplication of effort among the LRRI (another past recipient of tobacco funds), BioModa, Inc., and UNM. Dr. Rubin stated that he does not believe there are overlaps either in New Mexico or nationally. He indicated he does not know definitively if any of BioModa's work is duplicative. Senator Carraro asked if certain information is shared. Dr. Robert Katz from UNM Hospitals noted that thousand of documents exist about the use of statins, which are used for treatment of cholesterol issues, but not for emphysema. He

said there is a statin for cardiovascular disease, too. Dr. Katz indicated that certain "intellectual property" concerns limit the amount of information he could discuss with the committee members.

Representative Chasey recommended that the LRRI meet with BioModa, Inc., and make the distinction between the two groups. Representative Begaye asked about studies involving uranium mining, since there is a high incidence of emphysema in children exposed to uranium mining. Dr. Rubin said there are some studies, and he noted that there may be cultural or environmental differences among smokers, which impact their illnesses. His goal is to find a therapy to treat the disorders caused by tobacco use.

### **Tobacco Master Settlement Agreement (MSA) Revenue, Litigation, Legislation and Enforcement Update**

David Thompson, an assistant attorney general from the New Mexico Attorney General's Office (AGO), reviewed some of the enforcement and litigation issues involving tobacco settlement revenues, the Cigarette Tax Act and the Tobacco Products Act. He was assisted by his paralegal, Claudia Ravanelli. He reported that \$36 million in revenues has been received to date for 2007, and an aggregate amount of \$320 million has been received since 1999 as a result of the MSA.

Mr. Thompson reported that the AGO and the Taxation and Revenue Department (TRD) staff continue to work together closely to meet the diligent enforcement requirements for the state under the MSA. The tobacco companies have filed litigation in all the participating states, including New Mexico, charging that the states have not diligently enforced the MSA, although both he and Representative Chasey noted that New Mexico passed laws as quickly as the legislature could. The participating manufacturers (PM) had requested that the court order arbitration as defined in the MSA concerning the independent auditor's determination not to apply a nonparticipating manufacturer (NPM) adjustment to the PM's 2006 annual payment. Mr. Thompson noted that the most recent court ruling from the First Judicial District Court on June 29, 2007 included an order for arbitration; however, the decision is on appeal at the New Mexico Court of Appeals and the AGO is working on an appellate brief. Representative Chasey requested a private briefing on the case. Regarding enforcement of tobacco laws in New Mexico, Mr. Thompson reported that approximately over \$1 million worth of lawsuits have been filed against noncompliant manufacturers for the sales reporting periods of 2003 through 2006.

Also, he expressed concern that the distributors of tobacco products are not currently required by statute to stamp and ship into New Mexico only those tobacco products on the AGO directory. TRD and the Department of Public Safety (DPS) need the authority to intercept these unstamped cigarettes, which come in bulk across New Mexico's borders. He suggested that legislation be drafted to amend the definition of "contraband cigarettes" to include cigarettes that are not on the AGO directory. Staff was directed to prepare draft legislation for the committee to review at its next meeting.

Other issues noted were: the likely need to address internet sales of cigarettes and to define "small or little cigars", which are cheaper and not regulated like "cigarettes". These cigars have become nothing more than cigarettes wrapped in brown paper. There are significant tax advantages to the

manufacturer to sell "little cigars" as opposed to "cigarettes", and the AGO is very supportive of Proposed Rule 2006R-276P pending before the Alcohol and Tobacco Tax and Trade Bureau that would allow regulation and a more stringent definition of "little cigars". From 2002 to 2005, sales of little cigars have increased 69% and because these are not included in calculations for MSA payments, there is a strong financial incentive for the manufacturers to turn to this product. The committee members noted that most legislation is restricted during the short 2008 session due to the appropriations requirement; thus, a governor's message would be required for legislation to address these issues.

Senator Carraro expressed concern about the cigarettes sold on reservations and suggested there may be a need for a future joint committee meeting with the Indian Affairs Committee. It was suggested that the attorney general ask the tribes to check whether tobacco companies are in good standing and are reflected on the directory. Senator Carraro and other members expressed concern that the tobacco issues be addressed and that New Mexico continue its due diligence to avoid jeopardizing the revenues received under the MSA. Representative Begaye noted there needs to be dialogue with the tribes — government talking to government regarding tobacco issues.

Representative Begaye inquired about the bar coding on cigarettes. It was stated that the federal government regulates codes and that the attorney general should use the code to determine where the box originated. He suggested that the federal government not issue bar codes for an illegal product, to which Mr. Thompson agreed.

It was noted by Representative Chasey that tribes in other states have entered into agreements with their states to allocate some portion of the cigarette tax to the tribes as part of the regulation of tobacco on reservations. The committee suggested that more research be done on this subject. Also, Rep. Chasey asked that the committee be notified about the date for oral arguments on the case pending in the court of appeals.

### **Tobacco Settlement Permanent Fund Balances and Investments**

Michael Custer, an equity portfolio manager with the State Investment Council (SIC), reviewed a handout containing the latest balances in the Tobacco Settlement Permanent Fund. Fifty percent of the tobacco settlement revenues remain in the fund, while the other 50% are distributed to the Tobacco Settlement Program Fund for annual appropriation by the legislature. Effective in FY07, when 4.7% of the balance in the permanent fund exceeds 50% of the revenue stream, then the annual distribution of 4.7% of the average of the year-end market values of the Tobacco Settlement Permanent Fund for the immediately preceding five calendar years will be made to the tobacco settlement program fund for appropriation. He reported that the current market value is approximately \$95 million and that \$21.19 million had just been paid out. He reviewed the actual allocation of the funds in the state's \$14 billion in total assets and the SIC investment strategy.

In response to Senator Carraro, Mr. Custer clarified that the Tobacco Settlement Permanent Fund is invested in a similar manner to other state permanent funds. Although the permanent and severance tax bond funds have some exposure to real estate investments, the tobacco funds do not.

Representative Zanetti made several inquiries about how the SIC manages the investment of state funds and about the losses incurred by the state due to its investments with the investment banking firm Bear Stearns. She asked Mr. Custer to provide follow-up responses to her questions.

### **Tobacco Settlement Preliminary Revenue Estimates; Update on Permanent Fund**

Laird Graeser, chief economist for the Department of Finance and Administration, offered the latest revenue projections for tobacco revenue after giving a brief update on the MSA. He noted that the attorneys general of 46 states signed the MSA with the four largest tobacco companies in the United States and that, since 1998, over 40 additional tobacco companies have joined the MSA. Under the MSA, payments will be made in perpetuity. The central purpose of the MSA was to reduce smoking, particularly youth smoking, in this country. Since the first state settlement was announced, total U.S. cigarette sales have fallen by more than 22%.

Annual payments are subject to three significant adjustments: inflation, volume and market share decline attributable to participation in the MSA. Inflation adds revenue to the base payment and volume adjustment reduces revenue. New Mexico taxable volumes are decreasing.

- The inflation adjustment is the greater of the CPI or 3% and is compounded annually. In a low inflation environment, settling states benefit from the inflation adjustment since they receive at least 3% even if the actual CPI is less.
- The volume adjustment reduces the revenue by the corresponding change in cigarette sales made by the original (since 1998) participating manufacturers (OPMs) — the year the MSA was signed. This is a cumulative adjustment that is made after the inflation adjustment. The revenue estimate assumes an annual volume adjustment of a **negative 2.5%**.
- The NPMs adjustment can reduce the total payments based on the relative market share loss of the OPMs. This adjustment could be sizeable since it is calculated at three times the market share loss of the OPMs, and payments can be reduced by this adjustment. The burden is on the OPMs to show that their participation in the MSA significantly contributed to the loss and once this condition is met, *the burden is on the states to prove that they have adopted and diligently enforced the state model statute*. The OPMs had never claimed this market share adjustment until 2005. As a result, the 2006 payments were about 13% less, \$4.8 million for New Mexico; however, there is active litigation as noted in Mr. Thompson's testimony above.

Projections: New Mexico's base payments through 2025 — prior to adjustments — are calculated at \$1.367 billion; however, after adjustment, the state is expected to receive \$1.061 billion, an amount of \$306 million less.

For FY08, the recent strategic contribution adjustment (SCA) or base increase "bonus payment" begins, which will continue for 10 years. The New Mexico net bonus payment to the Tobacco Settlement



Permanent Fund will be about \$5.6 million for FY08 and \$5.8 million for FY09, after the gross payments are adjusted.

*The projected net addition to the corpus of the Tobacco Settlement Permanent Fund in FY09 is \$21.0 million; an identical amount is projected for appropriation in the FY09 budget. This amount includes the projected bonus payment.*

Mr. Graeser reported that in FY07, New Mexico spending on tobacco prevention was \$7.7 million. In FY08, \$9.615 million is appropriated for tobacco prevention and control programs.

### **State of the State on Tobacco Issues**

Nathan Bush, New Mexico government relations director of the American Cancer Society, offered a policy review for the committee, including a brief review of cigarette taxes, taxes on noncigarette tobacco products, appropriations recommended and funded by the revenues in the Tobacco Settlement Program Fund and smoke-free workplaces. He told the committee that the primary motivations for taxing tobacco products are to prevent and reduce tobacco use and its harmful effects and to gain state revenue from the sale and use in the state of inherently harmful and deadly products, to at least partially offset the harms and costs caused by their sale and use in the state.

He reviewed cigarette tax revenues and stamping requirements, noting that health advocates prefer that taxes remain "price-based" rather than "weight-based". He said that changing to a weight base would make the best selling cigarettes even more attractive price-wise to buyers. He noted that legislation passed during the last legislative session redefined cigarettes to allow inclusion of "little cigars" to gain more favorable taxes on them. He reviewed how both Massachusetts and Florida had stopped or slowed funding of tobacco control programs, which negatively affected the states' successes in tobacco prevention and reduction. He discussed the consumption of large and small cigars and snuff, emphasizing that smokeless tobacco products are highly addictive.

Cigarette tax revenues have remained fairly steady at \$60 to \$61 million annually from 2004-2006. New Mexico cigarette taxes are seventeenth in the nation.

He pointed out that flavored cigarettes and sampling or free promotional cigarettes are used in the marketing of tobacco. He reviewed some of the current marketing trends and the audiences being targeted.

Policy considerations he offered were:

- increasing needs for smoking cessation and youth prevention and countermarketing;
- new, targeted regulation, particularly in the smokeless tobacco and cigar category;
- cigarette tax enforcement;

- state regulation of tobacco flavoring;
- increasing the appropriations for tobacco use and prevention to the level recommended by the Centers for Disease Control (CDC);
- increasing resources for the enforcement of the MSA; and
- fire-safe cigarette legislation to require manufacturers to make cigarettes that go out if not being smoked for a specified period of time.

Senator Feldman expressed concern about cigar bars, and Mr. Bush stated that by next year, there would be few, if any, that could meet the standards for licensing.

Cynthia Serna, director of New Mexicans Concerned About Tobacco, gave a detailed presentation accompanied by handouts about the Food and Drug Administration (FDA) legislation pending in Congress. FDA regulation would provide a strong framework to support state efforts to reduce and prevent tobacco use by both youth and adults and reduce health care and other costs. The legislation would vest the FDA with jurisdiction to regulate both current and new tobacco products and restrict tobacco product marketing. Senator Feldman requested that staff draft a letter to the New Mexico congressional delegation asking for its support in gaining passage of the legislation. The committee unanimously endorsed sending the letter to the congressional delegation.

Ms. Serna discussed tobacco product marketing and provided numerous statistics about the dollars spent on advertising. In 2005, cigarette companies spent \$13.11 billion on advertising and promotional expenses. The five major U.S. smokeless tobacco manufacturers spent \$250.8 million on smokeless tobacco advertising and promotion in 2005.

In New Mexico, \$48 million a year is spent on tobacco product marketing.

### **Breast and Cervical Cancer Program**

Larry Heyeck, deputy director of the Medical Assistance Division (MAD), Human Services Department (HSD), and Virginia Alcon, staff manager of MAD, discussed their program's history; eligibility and program benefits; related statistics; program goals; and the distribution of Medicaid program costs. This program was implemented in July 2002, and 80% of its funding is from federal funds. The remaining 20% comes from state funds. In FY07, 12,865 women were served by the program; more than 54% of those served are Hispanic. Women in the program receive full Medicaid coverage through fee-for-service.

### **Walk to the UNM Cancer and Treatment Center Conference Room Lunch Presentation**

Committee and staff members, along with Legislative Finance Committee staff, joined Dr. Cheryl Willman, director and CEO of the UNM Cancer and Treatment Center (CRTC) for lunch and a presentation about the cancer center. Dr. Willman gave a compelling presentation, highlighting the major

achievements of the CRTC, which is the official cancer center of New Mexico and one of only 60 premier National Cancer Institute (NCI)-designated cancer centers in the nation.

The CRTC provides the state's only higher education programs in cancer health care professions. The CRTC treats more than 40% of all adults and virtually all of the children in New Mexico affected by cancer. The CRTC, under Dr. Willman's direction, has embarked on an ambitious \$90 million capital construction project, breaking ground on a new world-class cancer treatment and clinical research facility that will introduce many new state-of-the-art cancer diagnosis and treatment capabilities that are not currently available in this state. It is projected to accommodate more than 200,000 patient visits every year. There is still a funding need of \$18.7 million, of which Dr. Willman is hoping for \$12 million in direct (cash) appropriations with the remainder from other funding sources such as general obligation bonds.

After lunch, Dr. Willman gave a short tour of small areas of the current facility, where she emphasized the need to complete this construction project slated for a February 1, 2009 opening.

#### **UNM Health Sciences Center Performance Report**

Dr. Paul Roth, executive vice president for health sciences and dean of the UNM School of Medicine, and Dr. Richard S. Larson, M.D., Ph.D., vice president for the UNM Health Sciences Center (HSC) translational research and a professor of pathology, gave the committee an overview of the UNM HSC and its organizational structure. The center received \$5.4 million in FY08 appropriations. Various programs are partially funded from the tobacco settlement revenues. They include genomics, biocomputing, environmental health, the LRRI, the New Mexico Poison and Drug Information Center, pediatric oncology, telemedicine, school of medicine faculty recruitment and retention, specialty education in pediatrics and trauma and the area health education center. Nearly \$40 million has been appropriated to UNM HSC from this revenue stream since FY01. A considerable portion of these funds has been dedicated to clinical research and trials allowing researchers to study the safety and efficacy of new medications for the treatment of chronic disease related to tobacco-sensitive organs, including the heart, lungs, brain and kidneys.

UNM is one of the few institutions (1 of 52 universities) in the country to receive a NIH planning grant to transform the way in which clinical research and training is done, and to integrate clinical, translational and basic science research. This will result in \$50 million in funding over five years. UNM HSC is working to build a biomedical research corridor in New Mexico. For every dollar put into the genomics program, \$10.00 to \$14.00 is leveraged from the federal government.

During the presentation, there was a break to accommodate President Schmidly, who introduced himself and addressed some of his proposals to improve UNM. The committee members took a few moments to introduce themselves and explain which districts they represent.

The meeting was adjourned at approximately 3:30 p.m., and those wishing to participate were given a tour of various sections of the new Bill and Barbara Richardson Pavilion.

**UNAPPROVED MINUTES**  
**of the**  
**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 1, 2007**  
**Room 311, State Capitol**  
**Santa Fe**

The third meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative Gail Chasey and Senator Mary Jane M. Garcia, co-chairs, at 10:10 a.m. in Room 311 of the State Capitol in Santa Fe.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Mary Jane M. Garcia, Co-Chair  
Rep. Danice Picraux  
Rep. Gloria C. Vaughn

**Absent**

**Absent**

Sen. John T.L. Grubestic  
Sen. John C. Ryan

**Advisory Members**

Rep. Ray Begaye  
Sen. Joseph J. Carraro  
Sen. Linda M. Lopez  
Rep. Teresa A. Zanetti

Sen. Rod Adair  
Sen. Dede Feldman  
Sen. James G. Taylor

**Staff**

Roxanne Knight, Legislative Council Service (LCS)  
Jacob Winowich, LCS

**Guests**

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

**Monday, October 1**

The meeting was called to order at 10:10 a.m. Representative Chasey and Senator Garcia welcomed committee members and guests. Committee members introduced themselves to the audience.

**Tobacco Use Prevention and Control (TUPAC) Program Update**

Benny Shendo, Jr., secretary, Indian Affairs Department (IAD), introduced himself and two members of his staff, Brenna Clani and Lillian Brooks.

Secretary Shendo reviewed the handout provided to the committee. IAD has received two appropriations from the Tobacco Settlement Program Fund: one in July 2006 in the amount of \$500,000, and the other in July 2007 in the amount of \$500,000. IAD partnered with the New Mexico Department of Health (DOH) TUPAC Program and the New Mexico Tribal Tobacco Coalition to develop programs that build tribal capacity. This tribal-state effort identified a need to develop culturally appropriate tobacco cessation and prevention initiatives that recognize the distinct ceremonial uses among New Mexico's Native American communities, as opposed to commercial use.

Building tribal TUPAC Program capacity that is culturally appropriate addresses tobacco cessation and prevention and promotes healthier families and communities. IAD divided each year's appropriation into three categories: (1) mini-grants for TUPAC programs; (2) money awarded through a competitive request for proposals (RFP) process for capacity and infrastructure building and for the development of tobacco cessation curriculum; and (3) the sponsorship of a youth planning conference.

Although the mini-grants, ranging from \$10,000 to \$20,000, were available to all 22 tribes, only 10 tribes and pueblos received awards. Small tribes received \$10,000; medium sized tribes received \$15,000; and larger tribes received \$20,000. The Pueblo of Santa Ana is the only one that did not spend its grant of \$10,000.

In the second category, funds were awarded after a statewide call was made for applications through an RFP process. The evaluation committee awarded five contracts:

- \$58,595 to Albuquerque Indian Center, Inc.;
- \$58,000 to the Pueblo of Jemez;
- \$52,815 to the Pueblo of Laguna;
- \$78,000 to Oso Vista Ranch; and
- \$90,500 to Tohatchi Fighting Back, Inc.

Finally, money was set aside for the Tobacco Cessation and Prevention Youth Planning Seminar, co-sponsored with DOH and IAD. In conjunction with the conference, money was used to add a tobacco cessation and use prevention component to the IAD web site.

Secretary Shendo explained that not being able to award multiyear contracts during the first year of the program made it difficult to attract bidders. He looks forward to issuing multiyear contracts so that the rebidding process can be avoided, particularly because of the time required to go through the RFP process.

There was considerable discussion about the contracting process and the need for IAD to have additional staffing. Representative Begaye expressed concern about notification to the tribes about the mini-grants. Secretary Shendo indicated that he sent letters about the mini-grants to all the tribal leaders. He noted that some funds received by the tribes were flowing back to the DOH and the TUPAC programs offered by the DOH. Representative Chasey noted that a number of school districts do not apply for funding. Representative Begaye noted his preference that funds go into programs with benchmarks for success rather than conferences. Secretary Shendo indicated that he continues to support

the leadership conference. Representative Begaye requested a report following the conference in 2007. Representative Begaye stated that he thinks there is a possibility for moving the \$500,000 back to the DOH; however, he ultimately decided that the IAD should continue with the appropriation. He is concerned that the Navajo Nation is not being included, but Secretary Shendo reaffirmed that he has notified the tribes about the IAD program. Secretary Shendo stated that the funding was needed in the Native American communities and should continue.

In response to Representative Picraux's questions concerning multiyear contracts, DOH representative Larry Elmore stated that the DOH issues multiyear (e.g., four-year) contracts contingent upon appropriations. Representative Zanetti advised that more data are needed on the success of these programs. She expressed concern about rural communities being left out or missing out on the funding because of a lack of understanding of the RFP process. She asked if there is someone at the state level who could offer assistance to them. Representative Chasey asked the DOH representatives if they could assist IAD, and they agreed to join forces to assist wherever needed.

Senator Carraro suggested that the committee may want to look at requiring a local match for the funds, particularly so that there could be a balancing of responsibility between the state and tribal communities. Secretary Shendo stated that many of the mini-grants are complementing programs in the communities. Senator Carraro referenced some research materials on the tax agreements that are shared among other states and tribes with regard to cigarette and other taxes. The senator expressed concern over competing interests with the tribes selling discounted cigarettes, while simultaneously requesting TUPAC funding dollars. He acknowledged that there is a sovereignty issue, and wondered aloud if this issue should receive additional committee attention. Representative Chasey responded that with the elevation of the IAD to cabinet status, perhaps the time has come to look at the types of tax agreements that might be of interest to the committee. Senator Carraro expressed concern over the estimated decrease in tobacco settlement funds, and he suggested that the time for discussing tax agreements with the tribes may be now. Representative Chasey noted that in a joint 2002 interim meeting with this committee and the Indian Affairs Committee, the tribal leaders requested government-to-government talks rather than a legislative solution. Representative Chasey suggested to Secretary Shendo that he assume leadership of this issue by initiating talks between the tribes and state government officials. She said the legislature would be glad to facilitate any discussions that the tribes would like to have with the executive branch. Representative Vaughn suggested that Secretary Shendo speak with Senator Pinto and that a joint Indian Affairs Committee meeting be considered in the future, after first trying the government-to-government talks.

Representative Chasey and Senator Garcia reiterated Representative Zanetti's concern that the TUPAC programs funded through the IAD need to maintain appropriate data and use accepted methodologies for tracking program success so that the funding could be included with the DOH funding when ascertaining if New Mexico is meeting the levels of funding recommended by the Centers for Disease Control and Prevention (CDC). Representative Chasey indicated that she sees a need for discussion on the cigarette tax issues.

### **Approval of the August 2007 Minutes**

The minutes of the August 27, 2007 meeting were adopted unanimously by the committee members after the committee adopted the amendment of Senator Carraro to include him as an attendee during the August meeting.

### **Introduction of Dr. Alfredo Vigil, Secretary, DOH**

Dr. Vigil appeared before the committee, and complimented Secretary Shendo for his initiatives with the "small grants" offered for tobacco programs through the IAD. Dr. Vigil expressed his support for these types of grants that encourage small agencies and groups to work together for purposes of applying for and receiving grants. He credited the committee members with doing great work, particularly in the areas of prevention and breast cancer treatment. He called for universal health care to end the degree of human suffering experienced by those without health insurance and health care.

Senator Garcia thanked Dr. Vigil and Representative Begaye said that New Mexico is far ahead of Montana in its prevention initiatives.

### **Proposed Legislation**

Pam Ray, a staff attorney with the LCS, reviewed draft legislation requested by the committee members during its second meeting. Accompanying Ms. Ray were paralegal Claudia Ravanelli and Assistant Attorney General Francise Chavez. Ms. Chavez explained that the draft legislation had been discussed among staff at the Taxation and Revenue Department, along with the attorney general's staff.

The proposed legislation amends the Cigarette Tax Act to clarify definitions relating to cigarette taxation and the Master Settlement Agreement, requiring that stamped packages of cigarettes be manufactured by entities listed on the attorney general's directory of tobacco product manufacturers and brand families; it includes a definition of the "directory" and "tobacco product manufacturer". The primary reason for the changes is to comply with the provisions of the Master Settlement Agreement and to assist with enforcement of unstamped tobacco products. The changes will expedite the seizure of unstamped products. The changes apply to nontribal cigarettes. Also, the changes are consistent with the language contained in the Tobacco Escrow Fund Act.

Senator Carraro suggested that the legislation be forwarded to the Courts, Corrections and Justice Committee to review the penalty provisions. Ms. Ravanelli pointed out that the legislation closes a loophole in the law and that the penalty is the seizure of the product and taking of the license of the distributor. Representative Begaye asked that tribes that have smoke shops be invited if the bill goes to the Courts, Corrections and Justice Committee. Ms. Ravanelli noted that the position of the attorney general is that the unstamped cigarettes are contraband under current law, but that the seizure authority is absent in the law. Representative Chasey noted that the legislation will shift the burden of compliance to the distributor.

Ms. Ray asked that the committee approve technical adjustments to the legislation. The bill was unanimously adopted on the motion of Senator Garcia, which was seconded by Representative Vaughn.

## **TUPAC Program Evaluation and RFP Process Report**

David Vigil, bureau chief, Chronic Disease Prevention and Control, DOH, and Larry Elmore, program manager, TUPAC Program, gave a presentation on the program. Data reflecting tobacco use in New Mexico from 2000-2006 indicate the following:

- a decline of 15.5% fewer smokers in New Mexico in 2006 compared to 2001;
- 11,100 adults were saved from dying prematurely from smoking;
- during the first year of TUPAC, there were 1,036 fewer smoking-affected births, and over five years, it grew to 5,143 fewer smoking-affected births;
- savings from fewer smoking-affected births are \$1.11 million the first year and \$5.92 million over five years;
- savings from fewer heart attacks and strokes was \$1.48 million the first year, increasing to \$20.0 million over five years;
- annual savings from fewer smoking-caused heart attacks and strokes grows substantially each year as more health problems are prevented by the initial smoking decline;
- savings resulting from the prevention of smoking-caused cancer are even larger, but do not begin to accrue until years after the initial smoking decline;
- 40% of smoking-caused health care expenditures in New Mexico are paid by the Medicaid program;
- over their lifetimes, the 50,690 adults who have quit smoking between 2001 and 2006 will have saved New Mexico \$167.2 million in future Medicaid expenditures;
- the total reduction to future health costs based on the 15.5% decline in adult smoking in New Mexico is projected to be \$418.1 million; and
- the overall trend in youth tobacco use (grades nine through 12) from 2001 to 2005 has now been stabilized. Statewide smoking by adolescents was reduced from 30.2% in 2003 to 25.7% in 2005. Previously, smoking among the state's youth had been increasing. There was a statistically significant decline in high school smoking from 2003 to 2005 in four counties: Grant, Mora, Otero and Quay. The most significant decline occurred in Mora County, where youth smoking dropped by 19% (48.7% to 29.8%).

There are four key elements for reducing youth tobacco use: clean indoor air laws; increases in the price of tobacco products; statewide media campaigns; and increases in the effectiveness of prevention activities. Senator Carraro noted that every dollar spent on tobacco cessation and prevention yields monetary benefits many times over.

Focusing efforts at the middle school level was recommended by the DOH staff. They encouraged continued partnerships with other state agencies such as the IAD, and with other state programs, including diabetes prevention programs. Other highlights noted were 4,596 registered callers for the quit line and servicing callers with the nicotine replacement therapies (e.g., gum, patches). TUPAC has new initiatives focusing on spit tobacco prevention; training for contractors; development of youth media campaigns and pre- and post-testing for the curriculum used. Representative Zanetti expressed concern that high-risk groups may not be including children with a lot of disposable income. Mr. Elmore suggested that the mass media campaigns will reach all children. He noted that the provisions of the Clean Indoor Air Act will result in more people contacting the quit line.



The presenters noted that the RFP process was initiated and posted on September 30, 2007, which will result in the awarding of multiyear (four-year) contracts for TUPAC programming. They noted that there is plenty of capacity for providing additional cessation and prevention programming if additional appropriations are made to the DOH. Mr. Elmore noted that the DOH has expanded contracts to provide more nicotine therapy. Representative Picraux wondered if specific groups are targeted for the programs. Mr. Vigil reported that the DOH focuses on different high-risk groups, particularly some of those not covered by any insurance program for tobacco prevention. Representative Picraux expressed her concern that the DOH should place some focus on working with role models (e.g., teachers and others) who are in regular contact with youth. Representative Vaughn asked if certain hospitals do screenings for smokers, to which Mr. Vigil responded that UNM hospitals screen all patients for tobacco use.

In response to questions about the health impacts of smoking, Mr. Elmore pointed out that smoking releases carbon monoxide, which goes into the blood stream and can have a particularly negative impact on the cardiovascular system.

There was additional discussion about the impact of raising cigarette taxes, in particular because the number of packs of cigarettes sold per New Mexico resident had its most dramatic decrease after the \$.70 tax increase in 2003.

### **Diabetes Program Evaluation and RFP Process Report**

Judith Gabriele, diabetes program manager for the DOH, began her presentation by stating that 143,760 New Mexicans (one in 10 adults) have diabetes. She noted that the risk factors for diabetes are obesity, lack of physical activity, age, family history, ethnicity and having a baby that weighs over nine pounds. The cost of diabetes in New Mexico in 2006 is estimated at nearly \$2 billion.

Funding provided through tobacco settlement dollars has purchased:

- physical activity and nutrition programs for almost 90,000 elementary school students;
- community-based disease management programs for more than 7,000 people with diabetes;
- meters and strips to 27 federally qualified primary care centers to be distributed to uninsured and underinsured patients and public health offices for blood glucose testing for high-risk patients that have reached more than 8,000 people;
- training and professional development for more than 500 providers;
- technical assistance, educational supplies and diabetes patient monitoring equipment for clinics that serve uninsured and underinsured people;
- public and patient education materials and learning tools for people with diabetes;
- social marketing campaigns for *Walk Doña Ana* and *Active and Alive*, community-based physical activity programs; and
- a nurse for diabetes and prevention control, two health educators, and a .5 FTE clerk.

Ms. Gabriele reviewed all the programs funded from tobacco settlement funds and offered a graphic presentation of the outcomes achieved.

A significant priority for the fiscal year 2007 program was to encourage people with diabetes to use the quit line and receive free nicotine replacement therapy (NRT). Three hundred forty-one people with diabetes registered with the Quit Line and 176 received NRT; the majority requested the patch. Ten community health workers received training about motivational interviewing for smoking cessation. Information and resources about diabetes prevention and the quit line were distributed to primary care providers and the Diabetes Advisory Council.

### **HIV/AIDS Program Evaluation and RFP Process Report**

Daryl Smith, bureau chief of the DOH Infectious Disease Bureau, reviewed the HIV/AIDS program. As of July 31, 2007, there were 3,312 persons on record living with HIV/AIDS in New Mexico. Of those, 2,188 were diagnosed in-state. In FY07, there were 150 newly diagnosed cases of HIV/AIDS in New Mexico and 28 deaths related to HIV/AIDS. The program receives total funding of \$470,000 distributed as follows: the HIV services program receives \$310,000 and the harm reduction program receives \$160,000. The HIV services are allocated as follows and the services are delivered through the Health Management Alliance (HMA) provider agreements:

- Alianza of New Mexico (Roswell) — \$65,000;
- Camino de Vida (Las Cruces) — \$65,000;
- New Mexico AIDS Services (Albuquerque/Farmington) — \$65,000;
- Southwest CARE Center (Santa Fe) — \$65,000; and
- the University of New Mexico Hospital Truman Street Clinic — \$50,000.

In FY07, 1,837 persons with HIV/AIDS received these services. In FY06, 1,712 received services. In FY05, 1,635 received services. This results in a 7.4% overall increase. A 96% satisfaction rate was reported for the FY07 services delivered through HMAs.

The Harm Reduction Program gets \$160,000 allocated as follows:

- Just Healthcare — provides primary medical care to intravenous drug users: \$40,000;
- New Mexico AIDS Services — Farmington expansion: \$14,000;
- Dominick Zurlo – contracted trainer: \$16,000;
- Alianza of New Mexico (Roswell): \$30,000; and
- Santa Fe's Health Care for the Homeless — expansion of harm reduction services in Santa Fe County: \$60,000.

Through the Harm Reduction Program, there are 54 sites statewide for syringe exchanges. Since 1998, more than 16,000 individuals have enrolled in the DOH-sponsored syringe exchange programs statewide. Since 2001, there have been more than 350 "saves" (cases in which people have been resuscitated) using naloxone and rescue breathing.

Representative Begaye inquired about the syringe distribution process, to which Mr. Smith noted that syringes are free, but the exchange is highly controlled by the program. There are 44 DOH public health office sites statewide that participate in the program.

**Biomoda, Inc., Update on Its Research**

John Cousins, president of Biomoda, Inc., reviewed the role of Biomoda in its study of veterans to detect early lung cancer. The Biomoda study involves using a noninvasive sputum test, the results of which could determine if larger scale testing should be done. Biomoda is hoping to receive a contract from the Veterans' Services Department, which received a \$350,000 appropriation for this type of study. Biomoda has a clinical team assembled that screens 100 veterans in four groups: those who have never smoked, those at risk who are smokers or have had battlefield exposures, lung cancer patients and lung cancer survivors. He reviewed the multistep testing process.

If the contract award and study can begin in November, the final study report would be due on July 1, 2008. This would be the first year of the study. The Biomoda test is a much earlier detection mechanism than others available, and the results of the study could lead to further study and, ultimately, a better approach to early detection of lung cancer.

Committee members reviewed the funding recommendation that was previously made, although it was not funded at the requested level of \$1.3 million. Some members expressed concern that there not be a duplication of effort between the work of Biomoda, UNM and the Lovelace Respiratory Research Institute (LRRI). Mr. Cousins testified that he had met with Dr. Rubin from LRRI and that Dr. Rubin sees his work as competitive with Biomoda, although it is different because LRRI is looking for a "genetic predisposition" for cancer as compared to the early detection of cancer being studied by Biomoda.

**Public Comment**

During the comment period, representatives from the American Cancer Society and New Mexicans Concerned About Tobacco offered letters of recommendation for funding TUPAC at \$11 million; funding \$200,000 for breast and cervical cancer screening and diagnostic services (DOH); funding \$5,015,000 for breast and cervical cancer treatment through the Human Services Department; and funding no less than \$500,000 for tobacco control programs through the IAD.

**Funding Recommendations**

Representative Begaye initially requested that \$200,000 be set aside for a task force to study tobacco tax issues with the tribes. He later withdrew his request after considerable discussion with committee members about pooling resources from other funds to address his request.

Senator Carraro had to leave the meeting, but he asked the members to consider funding \$100,000 to \$300,000 for Project Echo, a telemedicine and distance-learning program linking health care providers from rural clinics, the Indian Health Service and prisons with specialists at UNM.

After committee members and staff discussed revenue decreases for future tobacco settlement program funds, the members reviewed each funded item from previous years and compiled its recommendations. There was no objection to the final recommendations and they received unanimous support from the committee. Staff were directed to include recommendations that any cash balances and revenues available in excess of the \$21,000,000 recommendation should be awarded to the DOH TUPAC

programs to achieve a higher state ranking in achieving CDC compliance with the recommended minimum of \$13.7 million for tobacco use prevention and cessation. The committee also endorsed supporting the requests of the attorney general for sufficient enforcement funding in his budget to remain compliant with the Master Settlement Agreement.

The committee adjourned at approximately 3:30 p.m.